

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated June 1, 2017, made by the Ministry of Social Development and Social Innovation (the ministry), which determined that the appellant was not eligible to receive reimbursement for a shingles vaccine prescription as the ministry is not authorized to pay for prescription medications and the appellant has not provided evidence that she does not have other resources to pay for the prescription.

PART D – Relevant Legislation

The relevant legislation is section 69 of the *Employment and Assistance for Persons with Disabilities Act* (EAPDWA) and section 2(1) of Schedule C the *Employment and Assistance for Persons with Disabilities Regulation* (EAPDWR).

PART E – Summary of Facts

The appellant is in receipt of disability assistance. She has approximately 25% lung function and requires a double lung transplant.

The evidence before the ministry at the time of the reconsideration decision consisted of:

(1) A letter from the appellant to the ministry dated April 12, 2017, stating the following:

On April 11, 2017, I had to have the shingles vaccine done by the Cystic Fibrosis Clinic Nurse.

I cannot be on the transplant list unless I had this vaccine done.

If this vaccine was not done I would get rejection if I developed shingles due to being immune compromised.

I am on disability and I cannot afford to spend this kind of money.

Would you please cover the cost of this vaccine in the amount of \$225.61.

I am attaching the receipt of the vaccine.

(2) A receipt dated April 7, 2017, for a prescription of the shingles vaccine in the amount of \$225.61.

(3) A request for reconsideration dated May 16, 2017, in which the appellant writes:

Once again I am asking to be reimbursed \$225.61 for the needed shingles vaccine.

I am on the list for a double lung transplant, without this vaccine I could get rejection if I did develop shingles post transplant.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant is not eligible to receive reimbursement for a shingles vaccine prescription was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is section 69 of the EAPWDA and 2(1) of the EAPWDR:

Health supplement for persons facing direct and imminent life threatening health need

- 69** The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that
- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
 - (b) the health supplement is necessary to meet that need,
 - (c) a person in the family unit is eligible to receive premium assistance under the [Medicare Protection Act](#), and
 - (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
 - (i) paragraph (a) or (f) of section (2) (1);
 - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

General health supplements

- 2** (1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 [*general health supplements*] of this regulation:
- (a) medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all of the following requirements are met:
 - (i) the supplies are required for one of the following purposes:
 - (A) wound care;
 - (B) ongoing bowel care required due to loss of muscle function;
 - (C) catheterization;
 - (D) incontinence;
 - (E) skin parasite care;
 - (F) limb circulation care;
 - (ii) the supplies are
 - (A) prescribed by a medical practitioner or nurse practitioner,
 - (B) the least expensive supplies appropriate for the purpose, and
 - (C) necessary to avoid an imminent and substantial danger to health;
 - (iii) there are no resources available to the family unit to pay the cost of or obtain the supplies;
 - (a.1) the following medical or surgical supplies that are, at the minister's discretion, either disposable or reusable, if the minister is satisfied that all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies:
 - (i) lancets;
 - (ii) needles and syringes;
 - (iii) ventilator supplies required for the essential operation or sterilization of a ventilator;
 - (iv) tracheostomy supplies;

(a.2) consumable medical supplies, if the minister is satisfied that all of the following requirements are met:

- (i) the supplies are required to thicken food;
- (ii) all the requirements described in paragraph (a) (ii) and (iii) are met in relation to the supplies;

...

(1.1) For the purposes of subsection (1) (a), medical and surgical supplies do not include nutritional supplements, food, vitamins, minerals or prescription medications.

THE APPELLANT'S POSITION

The appellant was represented by her parents at the appeal hearing. The appellant's representatives did not argue against the ministry's position that it is not authorized to pay for prescriptions or that the appellant does not meet the criteria set out in section 69 of the EAPWDA. Rather, they argued that the ministry should cover this expense because the appellant cannot afford to and it is the only way that the appellant can move forward with her surgery and regain her health.

The appellant's representatives also stated that subsequent to the reconsideration decision the appellant's physician sought special authority from BC PharmaCare to have the prescription covered and this request has been denied.

THE MINISTRY'S POSITION

The ministry relied on its reconsideration decision at the appeal hearing. That decision looked to section 2(1.1) of the EAPWDR, which states that the ministry cannot pay for "prescription medications" under the items listed in section 2(1). As what is being asked for is reimbursement of a prescription, the ministry is expressly barred from paying this medical expense.

The ministry's reconsideration decision also found that the appellant did not qualify under section 69 because the appellant has not demonstrated that she did not have other resources to pay for the prescription as she had not provided evidence that she had attempted to claim the amount through BC PharmaCare.

THE PANEL'S DECISION

There is no question that section 2(1.1) bars the ministry from paying for prescription medications and that what is being asked for is reimbursement for a prescription medication. The panel finds that the ministry was reasonable in determining that it could not reimburse the appellant under section 2(1).

At the time of the reconsideration decision there was no evidence before the ministry that the appellant had attempted to have her prescription costs reimbursed by BC PharmaCare. At the appeal hearing, the appellant's representatives stated that subsequent to the reconsideration decision they have been informed by BC PharmaCare that it will not cover this cost. They did not, however, provide any evidence to substantiate this claim. Therefore, the situation has not changed. Section 69(d)(i) of the EAPWDA (referencing section 2(1)(iii) of the EAPWDR) requires that the appellant have no other resources available to cover the cost of the medical supply. In this case, the ministry was reasonable in determining that the appellant had not pursued all other sources of funding for the prescription at the time of the reconsideration decision and so did not meet the requirements of section 69.

Based on the above analysis, the panel finds that the ministry's determination that it could not reimburse the appellant for her vaccine prescription was a reasonable interpretation of the legislation and confirms the ministry's decision.